

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	

COMMENTS OF EDLINE AND EPALS, INC. TO
THE E-RATE FURTHER NOTICE OF PROPOSED RULEMAKING AND THE
NATIONAL BROADBAND PLAN E-RATE NOTICE OF PROPOSED RULEMAKING

Jonathan Abrams
Chairman
Steven Sidel
Chief Executive Officer
Edline
200 West Monroe
Suite 1250
Chicago, IL 60606
(312) 346-9900

Jennifer L. Richter
Mark C. Ellison
Jennifer A. Cetta
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037
(202) 457-5666

Counsel to Edline and ePals, Inc.

Edmund Fish
President
ePals, Inc.
13625-A Dulles Technology Dr.
Herndon, VA 20171
(703) 885-3400

Dated: July 9, 2010

EXECUTIVE SUMMARY

In the Further Notice of Proposed Rulemaking in this proceeding, the Commission tentatively concludes that it should remove web hosting from the Eligible Services List (“ESL”) because, “while many school districts find web hosting to be a useful way to post information for parents and the community, [the Commission does] not believe it is essential to the educational purposes of schools and libraries.” The Commission does not offer any support or rationale for this tentative conclusion and, as the 430 comments in the docket as of today make clear, the educational community vigorously disputes it.

The Commission’s proposed elimination of eligibility for web hosting in the FNPRM, which was issued in 2009, seems to run counter to core elements of the Obama Administration’s technology goals, as well as the Commission’s own goals for education, broadband and technology as set forth in the 2010 National Broadband Plan. The direction of our Administration and the Commission is in favor of greater openness, greater flexibility, more cost-effective and educationally useful technology, encouraging digital literacy, improving the flow of educational information for teachers, parents and students, and creating opportunities for civic engagement. The Commission must take notice that all of these goals are served by continuing to fund (and would be greatly harmed by diminishing) web hosting services as part of the E-rate program.

Edline and ePals, and the 430 commenters that already filed comments in the docket in support of web hosting, urge the Commission to preserve eligibility for web hosting as a Priority 1 service. Moving forward, the Commission should insist in its own decision-making regarding E-rate eligibility, and in USAC’s E-rate program administration, that all eligibility decisions are made consistent with competitive neutrality and technology neutrality. In keeping with the forward-looking direction of the Obama Administration and the National Broadband Plan, different ways that applicants choose to communicate over the Internet should not have different eligibilities that constrain schools from accessing the most modern, cost-effective and educationally useful electronic tools. Instead, the Commission and USAC must treat similarly-situated services (email, text messaging, web hosting, chat, blogs, discussion boards, microblogs, etc.) in the same manner for E-rate funding purposes (competitive neutrality) and refrain from providing preferential treatment to one form of electronic communication (technological neutrality) over another.

By consistently applying the Commission’s own principles, a simpler framework for E-rate eligibility will emerge that everyone can understand (e.g. communications tools over any kind of technology are eligible, while content is not). This will reduce costs and burdens for program administration for applicants, service providers and USAC. A simpler, technology neutral framework also will obviate the need for complex cost allocations, feature by feature, which consumes significant time for service providers and USAC. A simpler framework that makes all similarly-situated communications tools, over any technology platform, eligible, also will future-proof the ESL and require fewer changes over time as the technology evolves.

The National Broadband Plan E-rate NPRM emphasizes that applicants should be given more flexibility in selecting broadband services funded by E-rate so that they can leverage finite E-rate dollars to get more services for less money. Spending should be focused on more efficient uses that enable customized interactive online learning to engage increasingly computer-savvy students. There is no question, based upon the comments filed in the docket to date, that if financially challenged educators are given the flexibility and choice to spend E-rate dollars, they will choose

continued funding for web hosting which has become the first source of information for the school community and is essential to their educational purposes.

Edline and ePals can imagine no policy objective that supports eliminating eligibility for web hosting, and no rational basis upon which the Commission could assert that web hosting is less essential to the educational purposes of schools than VOIP, text messaging, email, proxy servers, or any number of services listed on the ESL. Moreover, we respectfully assert that the wealth of empirical evidence establishing the connection between increased family engagement in school (which is increased significantly through school websites) and improved educational outcomes suggests that web hosting may well be *more* essential to schools than many services currently listed on the ESL. The Commission must ensure that its decision-making with respect to web hosting is well founded and not arbitrary.

Schools should have access to the same modern technology capabilities, including web hosting and blogs, that our government feels is so vital for its own civic engagement. Through its "Open Government Memorandum," the Obama Administration is using the latest technologies to provide Americans greater access to the government through online services and data centers and greater opportunities for public participation in government agency activities. The White House itself created communities on Twitter, Facebook, My Space, YouTube and Flickr, as well as the Open Government blog and web page. Web hosting provides schools with entrée to these modern technologies. There cannot be a public policy objective to strip schools of the very technological capabilities that our government views as vitally important to communicate with its constituencies. Given that an immaterial amount of E-rate funding for Internet Access is spent on communication tools, a result that would wire schools for broadband but then fail to provide schools with useful broadband communications tools, would be out of sync with the goals of the Obama Administration, and this direction should not be taken by the Commission in this rulemaking.

TABLE OF CONTENTS

I.	BACKGROUND.....	3
II.	THE COMMISSION SHOULD NOT MAKE CHANGES TO THE E-RATE PROGRAM THAT CONFLICT WITH THE TECHNOLOGY GOALS OF THE OBAMA ADMINISTRATION AND THE COMMISSION'S OWN GOALS IN THE NATIONAL BROADBAND PLAN.....	5
III.	WEB HOSTING SERVICES ARE ESSENTIAL TO THE EDUCATIONAL PURPOSES OF SCHOOLS; ELIGIBILITY FOR WEB HOSTING SHOULD NOT BE ELIMINATED OR IMPAIRED.....	9
	A. The Educational Community Has Registered Its Collective View That Web hosting Is Essential.....	10
	B. Schools Rely Upon Web Hosting and Will Be Harmed by a Commission Decision Not to Continue Funding the Service.....	13
IV.	THE COMMISSION MUST NOT ARBITRARILY DETERMINE WHAT IS ESSENTIAL; INSTEAD, THE COMMISSION SHOULD ACCEPT THE JUDGEMENT OF EDUCATORS ABOUT WHAT IS ESSENTIAL, AND THEN THE COMMISSION SHOULD SIMPLY AND CONSISTENTLY APPLY ITS OWN PRINCIPLES (COMPETITIVE NEUTRALITY AND TECHNOLOGY NEUTRALITY), WHICH PROVIDE AN EFFECTIVE FRAMEWORK FOR ELIGIBILITY.....	14
	A. The Same Rationale Used by the Commission to Declare Interconnected VoIP and Text Messaging E-rate Eligible Should Be Consistently Applied to Web hosting.....	15
	B. The Commission Should Consistently Apply An Eligibility Framework that Embraces Its Own Long-Standing Guiding Principles.....	16
	1. Eligibility Decisions Should Be Competitively Neutral and Treat All Similarly-Situated, Web-Based Communications Services on an Even Playing Field Using the Same E-rate Eligibility Standards.....	17
	2. Eligibility Decisions Should be Technologically Neutral and Flexible Enough to Respond to Technological Advances.....	18
V.	CONTINUING TO FUND WEB HOSTING WILL NOT ADVERSELY IMPACT OTHER E-RATE SERVICES; HOWEVER, TO ENSURE NO ADVERSE IMPACT ON THE FUND, THE COMMISSION COULD CAP THE DOLLARS DEVOTED TO VARIOUS WEB-BASED COMMUNICATIONS TOOLS.....	20
	A. E-Mail and Web hosting Services Account For An Immaterial Amount of Total E-rate Funding.....	20
	B. Imposing a Cap on Funding for Web-Based Communications Tools Would Be More Beneficial for Schools Than a Priority 2 Designation.....	22

VI. CONCLUSION.....	23
---------------------	----

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	

COMMENTS OF EDLINE AND EPALS, INC. TO THE
E-RATE FURTHER NOTICE OF PROPOSED RULEMAKING AND THE
NATIONAL BROADBAND PLAN E-RATE NOTICE OF PROPOSED RULEMAKING

Edline and ePals, Inc. (“ePals”), leading providers of web hosting services for the educational marketplace, provide these comments to the Commission’s tentative conclusions in the Further Notice of Proposed Rulemaking (“FNPRM”) that either “web hosting should not be eligible for funding under the E-rate program, or, alternatively, should only be eligible for E-rate program funds as a Priority 2 service.”¹ As the tentative changes to web hosting eligibility are seemingly inconsistent with the Commission’s direction in the National Broadband Plan NPRM for E-rate, Edline and ePals also offer these comments in that proceeding.² Any decision by the Commission to eliminate or diminish E-rate eligibility for web hosting services is inconsistent with the Obama Administration’s technology goals, the Commission’s own National Broadband Plan,³ decisions

¹ *In the Matter of Schools and Libraries Universal Service Support Mechanism*, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 6562, 6564 ¶ 3 (2009) (“*FY2010 ESL Report and Order and FNPRM*”).

² *In the Matter of Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan For Our Future*, Notice of Proposed Rulemaking, 25 FCC Rcd 6872 (2010) (“*National Broadband Plan E-rate NPRM*”).

³ *Connecting America: The National Broadband Plan*, FCC Rep. to Congress, Executive Summary, XIV (2010), available at <http://download.broadband.gov/plan/national-broadband-plan.pdf> (“*National Broadband Plan*”) (citing the need to “upgrade the E-Rate program to increase flexibility, improve program efficiency and foster innovation by promoting the most promising solutions” in education); *see also* 335-36, Section 11.4 (recommending changes to modernize the E-rate program to address challenges and the opportunities presented by new broadband-enabled technologies, and noting that modernization of E-rate should be driven in part by fostering technology innovation).

reached by the Commission in the Report and Order that accompanies the FNPRM,⁴ and core concepts of “competitive neutrality” and “technology neutrality” which have justifiably served as guideposts for the E-rate program.

Edline and ePals, and the 430 commenters that already filed comments in the docket in support of web hosting, urge the Commission to preserve eligibility for web hosting as a Priority 1 service. Moving forward, the Commission should insist in its own decision-making regarding E-rate eligibility, and in USAC’s E-rate program administration, that all eligibility decisions are made consistent with competitive neutrality and technology neutrality. In keeping with the forward-looking direction of the Obama Administration and the National Broadband Plan, different ways that applicants choose to communicate over the Internet should not have different eligibilities that constrain schools from accessing the most modern, cost-effective and educationally useful electronic tools. Instead, the Commission and USAC must treat similarly-situated services (email, text messaging, web hosting, chat, blogs, discussion boards, microblogs, etc.) in the same manner for E-rate funding purposes (competitive neutrality) and refrain from providing preferential treatment to one form of electronic communication (technology neutrality). By consistently applying the Commission’s own principles, a simpler framework for E-rate eligibility will emerge that everyone can understand (e.g. communications tools over any kind of technology are eligible, while content is not). This will reduce costs and burdens for program administration for applicants, service providers and USAC. A simpler, technology neutral framework also will obviate the need for complex cost allocations, feature by feature, which consumes significant time for service providers and USAC. A simpler framework that makes all similarly-situated communications tools, over any

⁴ *FY2010 ESL Report and Order and FNPRM* at 6563, ¶ 2 (clarifying the eligibility of web hosting services in response to the 2010 *ESL Public Notice*); *National Broadband Plan E-rate NPRM* at 6874, ¶ 6 (giving applicants more flexibility in selecting broadband services so that schools and libraries can leverage E-rate dollars to get more services for less money and focus spending on more efficient uses that better serve the needs of schools and libraries).

technology platform, eligible, also will future-proof the ESL and require fewer changes over time as the technology evolves.

I. BACKGROUND.

Edline provides eligible web hosting services to participants in the schools and libraries (E-rate) universal service support program. Edline, ePals and other companies that offer web hosting provide web-based communications tools to thousands of schools, and millions of students, teachers, parents and other members of the school community. As the comments in the docket for this proceeding make clear, these constituencies have come to rely on web hosting as an essential communication tool. ePals is an education technology company, headquartered in the Washington, DC, metro area that creates products and services for the K-12 market globally. This includes an eligible web hosting service for primary and secondary schools.

Eligible web hosting services provide an essential means for students, teachers, parents and administrators to communicate via the Internet regarding vital information about the classroom, school and library (e.g., class schedules, assignments, calendars of upcoming events, club and sports activities, etc.). Web hosting enables every teacher and every classroom to have their own web pages, providing valuable information that empowers families in the educational process, increasing student achievement, reducing paper-based expenses through online communication, and providing digital learning opportunities and incentives for broadband adoption for students and parents in the information age.

Web hosting services clearly satisfy an operational need for schools to efficiently and effectively communicate with their constituents. Although some types of communication are frequently handled via e-mail, many types of communications are best handled through a website. For example, communicating school policies, school forms, calendars, and homework assignments all are better handled via a website. E-mailing or texting these kinds of documents, especially when

embedded with rich media, would be time consuming, administratively burdensome, and a grossly inefficient use of broadband resources. This is why schools and other institutions such as the FCC and USAC value and use websites as a vital and effective communications tool that supports their mission. It is also the reason why Internet communication technologies such as websites are at the heart of e-government initiatives.

Numerous studies demonstrate that increasing the level of communication and involvement between schools and their constituent families is an essential driver of educational performance.⁵ Studies have quantified the improvement in reading, writing and critical thinking that comes from the use of web hosted communications by students.⁶ Moreover, web-based communication technologies such as web hosting and e-mail are some of the most cost-effective investments a school can make to improve results and simultaneously save money. A white-paper commissioned by Edline demonstrates a \$10,000 dollar cost savings from a \$2,000 dollar investment by moving paper-based communication online with web hosting services.⁷

⁵ See "A New Wave of Evidence: The Impact of School, Family and Community Connections on Student Achievement, Southwest Educational Development Laboratory, Annual Synthesis 2002, available at http://www.edline.com/_assets/downloads/A_New_Wave_of_Evidence.pdf; "Are Private High Schools Better Academically Than Public High Schools?" Center on Education Policy, October 2007, available at http://www.edline.com/_assets/downloads/PrivateSchoolsReport.pdf.

⁶ (Boling, E., Castek, J., Zawilinski, L., Barton, K., & Nierlich, T. (2008, March). Collaborative Literacy: Blogs and Internet Projects. *The Reading Teacher*, 61(6), 504–506. doi: 10.1598/RT.61.6.10 ("[Online] writing for an audience of their peers motivated both classes to extensively revise and edit. In contrast to pencil-and-paper writing activities, students enthusiastically reworked their ideas to help their virtual partners grasp the ideas they wanted to communicate."); Murar, Karen, Elaine Ware. Teacherless Talk: Impressions from Electronic Literacy Conversations. *The Quarterly*, Vol. 20, No. 3. Summer 1998 ("the e-mail project socially liberated our students from constraints that tend to stifle individuals in usual class interactions. Students who might usually hesitate to be active discussion participants, experienced a lack of active discussion participants, experienced a lack of self-conscious in e-mail and a motivating comfort level.")

⁷ "School Saves Thousands of Dollars with Edline," available at http://www.edline.com/about_edline/success_stories/case_studies/school_saves_thousands_of_doll.html.

II. THE COMMISSION SHOULD NOT MAKE CHANGES TO THE E-RATE PROGRAM THAT CONFLICT WITH THE TECHNOLOGY GOALS OF THE OBAMA ADMINISTRATION AND THE COMMISSION'S OWN GOALS IN THE NATIONAL BROADBAND PLAN.

The Commission's proposed elimination of eligibility for web hosting in the FNPRM, which was issued in 2009, seems to run counter to core elements of the Obama Administration's technology goals, as well as the Commission's own goals for education, broadband and technology as set forth in the 2010 National Broadband Plan. The direction of the Administration and the Commission is in favor of greater openness, greater flexibility, more cost-effective and educationally useful technology, encouraging digital literacy, improving the flow of educational information for teachers, parents and students, and creating opportunities for civic engagement. The Commission must take notice that all of these goals are served by continuing to fund (and would be greatly harmed by diminishing) web hosting services as part of the E-rate program.

For its part, the Obama Administration committed through its "Open Government Memorandum" to using the latest technologies to provide Americans greater access to the government through online services and data centers and greater opportunities for public participation in government agency activities. The White House itself created communities on Twitter, Facebook, My Space, YouTube and Flickr, as well as the Open Government blog and web page. Schools should have access to the same modern technology capabilities, including web hosting and blogs, that our government feels is so vital for its own civic engagement.⁸ Web hosting provides schools with entrée to these modern technologies. There cannot be a public policy objective to strip schools of the very technological capabilities that our government views as vitally important to communicate with its constituencies. Given that an immaterial amount of E-rate

⁸ Memorandum on Transparency and Open Government, 74 Fed. Reg. 4,685 (2009). The President's Open Government Directive is available at: http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/.

funding for Internet Access is spent on communication tools (see *infra* Section V(A)), a result that would wire schools for broadband but then fail to provide schools with useful broadband communications tools would be out of sync with the goals of the Obama Administration. The same rationale that supports the Obama Administration's Open Government initiative supports continued funding of web hosting for schools, providing schools with the latest Internet communication technologies, enabling greater access and greater public participation, and enhancing the educational experience and student performance.

The reforms proposed in the National Broadband Plan E-rate NPRM also support continued access to web hosting. The Commission proposed providing greater flexibility for schools to choose the most cost-effective and educationally useful broadband services.⁹ As is emphasized throughout these comments, the Commission should, consistent with the concepts of competitive neutrality and technology neutrality, allow educators the flexibility to choose the communication tools they feel are the most cost effective and useful in meeting their educational purposes. It should be clear from the comments filed by educators in this docket, that educators view web hosting as vital to their educational purposes and are opposed to any proposals that would negatively impact eligibility.

The National Broadband Plan E-rate NPRM notes that the Commission has adopted a presumption that "activities that are integral, immediate, and proximate to the education of students" are essential to the schools "educational purposes," and any reasonable requests for any supported service – over any technology platform – to be used by any student, library patron, or school or library staff member while in a library, classroom, or on school or library property shall be

⁹ *National Broadband Plan E-rate NPRM* at 6874, ¶ 5.

eligible for discounts.”¹⁰ This standard, which incorporates both educator choice and technology neutrality, if consistently applied by the Commission, will result in continued eligibility for web hosting.

President Obama and the Commission place a high premium on digital literacy and civic engagement. In the National Broadband Plan E-rate NPRM, the Commission states that, “Access to broadband at key anchor institutions, including schools and libraries, is a critical component of enabling everyone in this country to develop the *digital skills* they need to prosper in the 21st century, as important functions of everyday life . . . Broadband can also *improve the flow of educational information, allowing teachers, parents and organizations to make better decisions tied to each student’s needs and abilities.*”¹¹ Improving the flow of information among teachers, parents and students is precisely what web hosting services offer and why such services are viewed as vital to educators, our schools and student performance. Moreover, through web hosting services, both parents and students are developing digital skills and experiencing the value of broadband in their everyday lives. The Commission emphasizes more than once that the E-rate program should help our children and communities to prepare for the “high-skilled jobs of the future and take advantage of the modern communications era.” The NPRM “represents the first step in increasing the availability and use of broadband by children and our communities through the E-rate program to create more opportunities for educational advances . . . and civic engagement.”¹² Digital literacy and broadband adoption goals are both advanced through use of and

¹⁰ *National Broadband Plan E-rate NPRM* at 6890, ¶ 42 (citing *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208-09, ¶¶ 17, 19(2003) (“*Schools and Libraries Second Report and Order*”); 47 C.F.R. § 54.500(b)).

¹¹ *Id.* at 6873, ¶ 2 (emphasis added).

¹² *National Broadband Plan E-rate NPRM* at 6874, ¶ 4.

support of web hosting services which drive students and parents to an online community for meaningful civic engagement.

The National Broadband Plan E-rate NPRM also emphasizes that more efficient E-rate products and services should be made available to schools and libraries: “By giving applicants more flexibility in selecting broadband services funded by E-rate, schools and libraries in both urban and rural areas will be able to leverage their finite E-rate dollars to get more services for less money. By focusing spending on more efficient uses that better serve the current needs of schools and libraries, E-rate recipients will be able to obtain higher bandwidth services that will enable more customized interactive online learning to engage increasingly computer-savvy students.”¹³ Web hosting services are inexpensive and deliver a tremendous impact for schools. If the National Broadband Plan truly aims to give educators flexibility and a choice over how to leverage finite E-rate dollars to get more services that satisfy their needs, there is no question that our schools would choose continued funding for web hosting. For less than 1/10th of one percent of a school’s annual budget, web hosting services transform school communities by enabling families to become meaningfully engaged in the educational process as partners in improving educational outcomes. Without online communication through tools such as web hosting, it is simply impossible for families to contribute to school and student success at the same level because access to vital school information is limited in scope and infrequent. Consistent with the goals of the National Broadband Plan, schools should be afforded the flexibility to continue to choose web hosting as an efficient, inexpensive, interactive, online, modern – and essential -- educational tool.

¹³ *National Broadband Plan E-rate NPRM* at ¶ 6.

III. WEB HOSTING SERVICES ARE ESSENTIAL TO THE EDUCATIONAL PURPOSES OF SCHOOLS; ELIGIBILITY FOR WEB HOSTING SHOULD NOT BE ELIMINATED OR IMPAIRED.

In the FNPRM, the Commission tentatively concludes that it should remove web hosting from the Eligible Services List (“ESL”) because, “while many school districts find web hosting to be a useful way to post information for parents and the community, [the Commission does] not believe it is essential to the educational purposes of schools and libraries.”¹⁴ The Commission does not offer any support or rationale for this tentative conclusion and, as the 430 comments in the docket as of today make clear, the educational community vigorously disputes it. The conclusion to eliminate web hosting eligibility also is seemingly at odds with the technology priorities of the Obama Administration and the Commission as found in the National Broadband Plan and as described above. Edline and ePals can imagine no policy objective that supports eliminating eligibility for web hosting, and no rational basis upon which the Commission could assert that web hosting is less essential to the educational purposes of schools than VOIP, text messaging, e-mail, proxy servers, or any number of services listed on the ESL. Moreover, we respectfully assert that the wealth of empirical evidence establishing the connection between increased family engagement in school (which is increased significantly through school websites) and improved educational outcomes suggests that web hosting may well be *more* essential to schools than many services currently listed on the ESL. The Commission must ensure that its decision-making with respect to web hosting is well founded and not arbitrary.¹⁵ The FCC cannot depart from established precedent

¹⁴ FY2010 ESL Report and Order and FNPRM at 6580, ¶ 37.

¹⁵ The Commission must ensure that its conclusions regarding the ESL and web hosting are not arbitrary. See *Massachusetts v. EPA*, 127 S. Ct. 1438, 1463 (2007) (“EPA has offered no reasoned explanation for its refusal to decide whether greenhouse gases cause or contribute to climate change. Its action was therefore arbitrary, capricious, ... or otherwise not in accordance with law.”) (ellipses in original; internal quotation marks omitted); *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 34, 43 (1983) (The agency’s decision was arbitrary and capricious because it did not provide a reasoned explanation justifying its actions and there must be a “rational connection between the facts found and the choice made.”); *Yale-New*

without a reasoned explanation, and it cannot treat similar situations in dissimilar ways. All of these problems are present in the Commission's decision to change direction on the eligibility of web hosting, without reaching a similar conclusion with respect to other similarly-situated web-based communications tools, such as email.

According to the standard set forth in the National Broadband Plan, and in the Report and Order that accompanies the FNPRM, a service is essential to the educational purposes of a school if it is "integral, immediate, and proximate to the education of students . . ."¹⁶ Unlike separately-priced firewall services, antivirus/anti-spam software, and scheduling services, which the Commission tentatively concludes in the FNPRM not to add to the ESL as non-essential, it is clear from the comments filed in this proceeding that educators view web hosting services as essential to their educational purposes – web hosting services are the core of their connectivity and communication with their students, parents, faculty, administration and community.

A. The Educational Community Has Registered Its Collective View That Web hosting Is Essential.

The Commission does not explain how it arrived at its tentative conclusion that web hosting is not essential to schools and libraries and that it should no longer be E-rate eligible, but it is noteworthy that 430 of the 608 comments filed in the docket to date weigh in on web hosting, and *all* of these comments disagree with the Commission's tentative conclusions and emphasize that

Haven Hosp. v. Levitt, 470 F.3d 71, 72 (2d Cir. 2006) (agency action based on new rule governing Medicare reimbursement was arbitrary and capricious "because the Secretary did not satisfactorily explain his reasons" for changing historical practice); *Sharron Motor Lines, Inc. v. United States*, 633 F.2d 1115, 1117 (5th Cir. 1981) ("There may not be a rule for Monday, [and] another for Tuesday..."); *ANR Pipeline Co. v. Fed. Energy Regulatory Comm'n*, 71 F.3d 897, 901 (D.C. Cir. 1995) ("[W]here an agency departs from established precedent without a reasoned explanation, its decision will be vacated as arbitrary and capricious."); *Burinskas v. NLRB*, 357 F.2d 822, 827 (D.C. Cir. 1966) ("the [agency] cannot act arbitrarily nor can it treat similar situations in dissimilar ways."); *Garrett v. FCC*, 513 F.2d 1056, 1060 (D.C. Cir. 1975); *NLRB v. Sunnyside Packing Co.*, 557 F.2d 1157, 1160 (5th Cir. 1977); *Revocation of License of Robert J. Listberger, Jr.*, 76 FCC 2d 212, 217 (Rev. Bd. 1980).

¹⁶ *National Broadband Plan E-rate NPRM* at 6890, ¶ 42; see also *FY2010 ESL Report and Order and FNPRM* at 6572, ¶ 18.

web hosting is essential to their educational purposes.¹⁷ The following comments posted by D. Murray, a teacher, express a common sentiment filed by scores of educators about how essential web hosting is to their educational purposes:

I'm a public school teacher who uses our website several times daily as a way to communicate with parents, fellow teachers and supervisors. Your proposed stance to make web hosting ineligible for ERate funding would greatly hamper our communication efforts. In your filing, FCC-09-105A1, you stated that "we do not believe it is essential to the educational purposes of schools and libraries". Web hosting is a service that provides critical information to parents as well as lesson information or homework assignments to students. This is an essential element to our educational purposes. In 2004 your group was keenly aware of the need for this service. Please do not remove something that is working so well and that has become such an important part of our school communications plans.¹⁸

Clay County USD # 379 from Kansas also made a compelling plea for continued funding for web hosting, noting that the Commission should continue to fund web hosting as a Priority 1 service because it is not an extravagance, it is a necessity and the first source of information today for the school community:

As a result of recent reductions in state funding, Kansas school districts are reducing staff to balance our budgets. With fewer staff members to answer phones, send written messages, and publish newsletters, it is even more important for our schools to have the ability to get vast amounts of information to large numbers of people quickly and easily. This is accomplished through our district web site. Eliminating E-rate funding for web hosting will only further hinder financially struggling districts, including ours, and our overworked staff. Research has shown that high student achievement requires strong parental involvement, and access to up-to-date information fosters active parents and community members. The FCC's efforts to provide resources to districts so all students have access to important educational opportunities is commendable. I request that you consider the effects of this proposed change and retain web hosting as a Priority 1 funded service. Web hosting

¹⁷ See Exhibit A for a list of the educators that filed comments in this proceeding urging the Commission to continue to fund web hosting. The comments reviewed date back to responses filed to the FCC's June 2, 2009, Public Notice. See *Comment Sought on Draft Eligible Services List for Schools and Libraries Universal Service Support Mechanism*, CC Dkt. No. 02-6, Public Notice, 24 FCC Rcd 7422 (WCB 2009) ("2010 ESL Public Notice"). In particular, the Commission sought comment on its clarification that password-protected web pages are eligible as part of web hosting services.

¹⁸ Comments of D. Murray, Teacher, CC Dkt. No. 02-6, filed on Dec. 18, 2009.

service is not an extravagance. In the 21st Century when many people are turning to the web as their first source of information, it is a necessity.¹⁹

Tazewell County Schools also filed comments in support of web hosting, stating that web hosting is a necessary educational tool. If the Commission eliminates federal funding for web hosting, Tazewell will pay for it directly, because it is so essential, but this will result in fewer dollars for textbooks:

Tazewell is entering a second year of budget crisis due to state cuts and loss of local revenues. The "fluff" has been removed from budgets, taken advantage of "natural attrition", put a hold on transfers to bus & building funds, and are now having to look at making other program cuts. Now is hardly the time to remove this reliable source of funds for a necessary educational tool. Because of Tazewell's size it is unlikely they will have new services funded by e-rate to offset this loss. The amount Tazewell might receive for web hosting is small compared to many things, but these funds would allow more dollars for classroom needs such as supplies, textbooks, field trips, etc. Please consider keeping web hosting as an eligible service.²⁰

San Lorenzo Unified School District also offered an interesting perspective on how critical web hosting has become for students and teachers, suggesting that it may be more critical to schools than libraries:

We have over 4,000 laptop computers and thousands more desktop computers in the hands of students and teachers every day. These students and teachers are accessing instructional content daily via our web hosting capability. In addition, students and parents access daily homework assignments, grades, attendance, teacher comments and other critical instructional and educational information on a daily basis via our web hosting capability. Web hosting has become more critical than any other vehicle for communication. Some say it is even more critical than traditional libraries and they may be correct, if not today then certainly tomorrow.²¹

The National Broadband Plan E-rate NPRM emphasizes that applicants should be given more flexibility in selecting broadband services funded by E-rate so that they can leverage finite E-

¹⁹ Comments of Assistant Superintendent Sherri L. Edmundson, Clay County USD, Kansas, CC Dkt. No. 02-6, GN Docket No. 09-51, filed on July 7, 2010.

²⁰ Comments of Tazewell County Public School System, CC Dkt. No. 02-6, GN Docket No. 09-51, filed on July 7, 2010.

²¹ Comments of Lowell Shira, San Lorenzo Unified School District, CC Dkt. No. 02-6, filed on July 6, 2010.

rate dollars to get more services for less money.²² Spending should be focused on more efficient uses that enable customized, interactive online learning to engage increasingly computer-savvy students. There is no question, based upon the comments filed in the docket to date, that if financially challenged educators are given the flexibility and choice to spend E-rate dollars, they will choose continued funding for web hosting which has become the first source of information for the school community and is essential to their educational purposes.

B. Schools Rely Upon Web Hosting and Will Be Harmed by a Commission Decision Not to Continue Funding the Service.

In deciding not to add firewall services, antivirus/anti-spam software, scheduling services, and wireless Internet access applications to the ESL, the Commission noted in the FNPRM that this decision will not have an adverse impact on small businesses because “the services were never funded in the first place. Applicants and service providers have never had an expectation that E-rate discounts would apply to these services and will therefore not be harmed by a decision to maintain the status quo.”²³ This is not the case with respect to web hosting. As the foregoing and the 430 comments in support of web hosting in the docket make clear, eligibility for web hosting is relied upon by numerous service providers that are small businesses and are serving thousands of schools to facilitate communication with well over *20 million students, parents, and teachers*.²⁴

Web hosting services, such as those offered by Edline and ePals, have touched millions of families and transformed school communities. As the quotes above from comments filed in the docket to date make clear, millions of families, educators and superintendents place web hosting services at the top of their list of essential educational tools that have made a essential meaningful difference to school and student performance. It is one of the most visible and popular benefits of

²² *National Broadband Plan E-rate NPRM* at 6874, ¶ 5.

²³ *FY2010 ESL Report and Order and FNPRM* at 6592, ¶ 73.

²⁴ This figure is a conservative estimate based upon a survey of leading web site solution providers excluding other web-based communications such as e-mail.

the E-rate program today. If web hosting is rendered ineligible, the FCC and the E-rate program will miss out on the opportunity to generate good will with highly visible and impactful services at very low cost to the program; in addition, rendering web hosting ineligible risks alienating thousands of schools and millions of families.

IV. THE COMMISSION MUST NOT ARBITRARILY DETERMINE WHAT IS ESSENTIAL; INSTEAD, THE COMMISSION SHOULD ACCEPT THE JUDGEMENT OF EDUCATORS ABOUT WHAT IS ESSENTIAL, AND THEN THE COMMISSION SHOULD SIMPLY AND CONSISTENTLY APPLY ITS OWN PRINCIPLES (COMPETITIVE NEUTRALITY AND TECHNOLOGY NEUTRALITY), WHICH PROVIDE AN EFFECTIVE FRAMEWORK FOR ELIGIBILITY.

In the FNPRM, the Commission expresses concern that applicants may be “confused by the differences between the Commission’s rules and the ESL.”²⁵ The Commission also raises concern that “changing its rules with the addition of each new service or change to the ESL does not enable USAC and the Commission to keep up with the rapidly changing needs of schools and libraries to access telecommunications and advanced services.”²⁶ The Commission seeks comment on any alternative proposals or ideas that would better inform the public of the services that are eligible for E-rate support.

Edline and ePals agree that E-rate eligibility has been very confusing for program participants. Some of this confusion is caused because USAC and the FCC have not consistently applied their own eligibility principles (competitive neutrality, technology neutrality, and what educators view as essential to the educational purposes), leading many to question the seemingly arbitrary compilation of services appearing on the ESL. Various web-based communications tools are used by schools and libraries today – e-mail, chat rooms, blogs, text messaging, microblogs, web hosting, etc. All of these tools are suitable for different types of communications tasks, but all are

²⁵ *FY2010 ESL Report and Order and FNPRM* at 6581, ¶ 41.

²⁶ *Id.* at 6582, ¶ 42.

tools that perform a communications function. Yet, some of these communications tools are eligible for E-rate funding while others are not. Application of the eligibility rules is so complicated and inconsistent that there is virtually no way for a small business with limited resources to understand the eligibility rules. High priced experts must be hired, and even they struggle with understanding the eligibility rules because eligibility is applied in such an inconsistent manner. The Commission needs a better, less reactive framework for E-rate eligibility that will allow the Commission and E-rate program participants to keep pace with rapidly changing educational technology and the evolving needs of schools and libraries. As discussed below, the Commission already has the needed framework and principles at its disposal. However, USAC and the Commission must begin meaningfully and consistently applying the principles of competitive neutrality and technology neutrality in order to begin arriving at less arbitrary results.

A. The Same Rationale Used by the Commission to Declare Interconnected VoIP and Text Messaging E-rate Eligible Should Be Consistently Applied to Web hosting.

The Commission need look no further than the Report and Order that accompanies the FNPRM in this proceeding to find two examples of services it has just declared E-rate eligible using rationale that, if consistently applied, would result in continued eligibility for web hosting.

In the Report and Order, the Commission determines that interconnected VoIP should be eligible for E-rate support because it will “*enhance access to* advanced telecommunications and *information services* for schools and libraries . . . the permanent inclusion of interconnected VoIP service *increases the options available to schools and libraries to encourage meaningful communications among parents, teachers and school and library administrators*. Indeed, because interconnected VoIP is increasingly used to replace analog voice service, funding interconnected VoIP services is consistent with the *concept of competitive neutrality, which is the principle of treating similarly-situated services in the same manner for E-rate funding*

purposes, as mandated by the Commission.”²⁷ Like interconnected VoIP, web hosting services increase access to information services, provide additional options to encourage meaningful communications among parents, teachers and administrators, and can be used to replace older communications technologies, such as simple e-mail.

Similarly, when the Commission determined in the Report and Order that it will modify its rules to include eligibility for text messaging, it used a competitive neutrality rationale once again, noting that “*text messaging is similar to other E-rate eligible services used by applicants to communicate, such as e-mail and paging services.*”²⁸ Just as the Commission determined that text messaging is similar to e-mail because it allows applicants to communicate, it should make the same determination with respect to web hosting and other similarly-situated web-based communications tools which perform online communication functions for the school community.

B. The Commission Should Consistently Apply An Eligibility Framework that Embraces Its Own Long-Standing Guiding Principles.

In the *Universal Service First Report and Order*, the Commission noted its agreement with the Joint Board's recommendation that competitive neutrality and technology neutrality should be considered in formulating universal service policies.²⁹ If the Commission simply observes and applies these principles in a consistent manner, eligibility decisions with regard to the E-rate program, including web hosting eligibility, will be vastly simplified.

²⁷ *FY2010 ESL Report and Order and FNPRM* at 6568, ¶ 13 (citing Federal-State Joint Board on Universal Service, CC Dkt. No. 96-45, Report and Order, 12 FCC Rcd 8776, 8802, ¶ 49 (1997) (“*Universal Service First Report and Order*”), *aff’d in part*, *Texas Office of Public Utility Counsel v FCC*, 183 F.3d 393, 440-42 (5th Cir. 1999) (subsequent history omitted)(emphasis added).

²⁸ *FY2010 ESL Report and Order and FNPRM* at 6571, ¶ 17.

²⁹ *Universal Service First Report and Order* at 8802, ¶ 49.

1. Eligibility Decisions Should Be Competitively Neutral and Treat All Similarly-Situated, Web-Based Communications Services on an Even Playing Field Using the Same E-rate Eligibility Standards.

As noted in the Report and Order that accompanies the FNPRM, competitive neutrality is the mandated principle of treating similarly-situated services in the same manner for E-rate funding purposes.³⁰ Given a world of converging technologies, and the wealth and variety of web-based and IP-enabled services available today, including web hosting, e-mail, text messaging, discussion boards, blogs, microblogs, etc., the Commission's tentative direction to single out web hosting and strip it of its eligibility is surprising. There is no public policy objective that supports making arbitrary distinctions among communications tools that render some eligible for E-rate funding while others are not.

In addition, nearly every school district will choose different combinations of Internet-enabled technologies for differing kinds of communications. Schools that choose web hosting as the most effective and cost-efficient method to communicate important information shouldn't be inhibited by restrictions on E-rate funding. Consistent with the flexibility that the National Broadband Plan suggests educators should have in spending their finite E-rate dollars,³¹ school officials should be free to use the type of Internet technology that they determine best suits their needs for a particular communication situation. Our government, including the FCC, has various web-based tools at its disposal for communications purposes. Imagine that the FCC would have to communicate with all stakeholders in this proceeding via e-mail rather than posting relevant communications and documents on the Commission's website. This would be an absurd result, and such absurdity should not be arbitrarily occasioned upon our schools.

³⁰ *FY2010 ESL Report and Order and FNPRM* at 6568, ¶ 13 (citing *Universal Service First Report and Order* at 8802, ¶ 49).

³¹ *National Broadband Plan*, Executive Summary, *supra* note 3, at XIV; see also *National Broadband Plan E-rate NPRM*, *supra* note 4, at 6874, ¶ 6.

2. Eligibility Decisions Should be Technologically Neutral and Flexible Enough to Respond to Technological Advances.

In view of ongoing innovations for web-based services, and the increasing availability of broadband for all schools and libraries, the difficulties the Commission and USAC are already experiencing with respect to eligibility for web-based communications tools will only increase unless a rational and technologically neutral approach is adopted that can evolve as technology advances. The Commission has adopted technological neutrality, as an outgrowth of competitive neutrality, as a guiding principle for universal service decisions:

We concur in the Joint Board's recommendation that the principle of competitive neutrality in this context should include technology neutrality. Technology neutrality will allow the marketplace to direct the advancement of technology and all citizens to benefit from such development. By following the principle of technology neutrality, ***we will avoid limiting providers of universal service to modes of delivering that service that are obsolete or not cost effective.*** The Joint Board correctly recognized that the concept of technology neutrality does not guarantee the success of any technology supported through universal service support mechanisms, but merely provides that ***universal service support should not be biased toward any particular technologies.*** We anticipate that a policy of technology neutrality will foster the development of competition and benefit certain providers, including wireless, cable, and small businesses, that may have been excluded from participation in universal service mechanisms if we had interpreted universal service eligibility criteria so as to favor particular technologies. ***We also agree with the Joint Board's recommendation that the principle of competitive neutrality, including the concept of technology neutrality, should be considered in formulating universal service policies relating to each and every recipient and contributor to the universal service support mechanisms, regardless of size, status, or geographic location.***³²

Concepts of technology neutrality require that the Commission and USAC not provide preferential treatment to one form of electronic communication over another. It also holds that applicants should not be limited to obsolete modes of communication. If E-rate schools are denied the benefit of marketplace advancements in web hosting and other tools that enable far more efficient and cost-effective communication, they will be greatly disadvantaged in their ability to

³² *Universal Service First Report and Order*, at 8776 ¶ 49 (emphasis added).

communicate online and to engage their constituents in the educational process. This cannot be the Commission's policy objective in this proceeding.

By simply and consistently applying the principles of competitive neutrality and technology neutrality, the Commission will arrive at a simpler framework for E-rate eligibility that everyone can understand (e.g. communications tools over any kind of technology are eligible, while content is not), which will reduce costs and burdens for program administration for applicants, service providers and USAC. A simpler, technology neutral framework also will obviate the need for complex cost allocations, feature by feature, which consumes significant time for service providers and USAC. A simpler framework that makes all similarly-situated communications tools, over any technology platform, eligible, also will future-proof the ESL and require fewer changes over time as the technology evolves.

The Commission and USAC will find, by applying a simpler framework that is technology neutral and competitively neutral, that there also is no basis to render ineligible discussion boards, chat rooms, instant messaging, blogs or other useful web-based communication technologies. For example, one might view an online "discussion board" or "chat room" as the textual equivalent of a conference call. To the extent a "blog" has any meaning as a communication form, it is a web page where the communications are sorted by date, similar to a list of e-mail messages. Moreover, a blog also "provides for the transmission of text messages" similar to an e-mail or a text message, both of which are eligible. Access to "chat" should be eligible because "chat" meets the definition of eligible e-mail in the ESL by "provid[ing] for the transmission of text messages." Making distinctions among these different tools, all of which are used to transmit messages violates technology neutrality and is confusing and burdensome for schools and service providers.

Today, schools and libraries are actively seeking the same kind of features for their Internet communication services as any other government organization, and should not be discouraged.

Trying to parse the technical nuances (and cost allocations) between “text messages”, “chat”, “online discussions”, “webmail”, “blogging”, and “web hosting” is unnecessarily cumbersome for the Commission, USAC, applicants, and service providers.

V. CONTINUING TO FUND WEB HOSTING WILL NOT ADVERSELY IMPACT OTHER E-RATE SERVICES; HOWEVER, TO ENSURE NO ADVERSE IMPACT ON THE FUND, THE COMMISSION COULD CAP THE DOLLARS DEVOTED TO VARIOUS WEB-BASED COMMUNICATIONS TOOLS.

In the FNPRM, the Commission raises concern that paying for non-essential firewall services, antivirus/ anti-spam software, scheduling services, and wireless Internet access applications, will “have an adverse effect on funds available for other already eligible services.”³³ However, continued funding of web hosting services has not had and will not have an adverse effect on other E-rate funded services.

A. E-Mail and Web hosting Services Account For An Immaterial Amount of Total E-rate Funding.

The major service providers offering K-12 schools web-based communication services (including both web hosting and e-mail) were estimated to receive roughly \$30 million in USAC funding commitments for FY2009.³⁴ This figure represents roughly 1.3% of the \$2.25 billion annual fund. In addition, Edline found that just 37 of the 2,000 Internet access providers, 1.5%, are dedicated to providing web hosting or e-mail services to E-rate eligible school and library customers.³⁵

³³ *FY2010 ESL Report and Order and FNPRM* at 6578, ¶ 34; 6579, ¶¶ 35, 36; 6580-81, ¶ 39.

³⁴ This figure includes both web hosting and e-mail services, because some providers of web hosting also provide integrated or separate e-mail capabilities. The figure would be substantially smaller if it attempted to isolate web hosting services from e-mail services. Note that the figure includes a correction for a data entry error by the Bureau of Indian Affairs (FRN 1895797).

³⁵ Edline has conducted a substantive analysis of funding provided for web hosting in FY2009. This analysis also includes email services, because some providers of web hosting also provide integrated or separate email capabilities. In arriving at this percentage, Edline reviewed the original funding commitment requests received by, and FCC Forms 471 filed by, commercial providers, state education and government Internet service providers and telecommunications, Internet service providers and competitive local exchange carriers for

Although web hosting dollars are not material to the E-rate program today, the benefits to schools from access to web hosting are significant. Web hosting services are inexpensive relative to the transformative impact benefiting schools across the country. ***Less than 1% of E-rate funds currently support online communications with over 20 million students and parents in thousands of schools nationwide through web hosting services.***³⁶ In the past, stakeholders have questioned the costs of K-12 web hosting providers in comparison to generic providers like Yahoo. The comparison misunderstands the unique requirements and needs of the K12 marketplace due to issues of safety, compliance, scale, and the need to securely differentiate audiences. For example, in the case of websites, K-12 providers typically include a site for every individual school building within a district in addition to sites for hundreds of individual classes, clubs, and departments that must be individually administered by teachers and staff. A single teacher may be required to administer a web presence for multiple classes and activities, with numerous subsidiary web pages providing daily information to a large audience of students. When one aggregates the cost of providing a multitude of “bargain” sites, for a proper comparison, K-12 web hosting service providers offer more comprehensive solutions at a fraction of the cost of what would be required from a generic provider. A similar dynamic exists with e-mail where typical free or inexpensive consumer facing offerings do not and cannot meet the enterprise needs of schools. There should be no question that web hosting services offer schools tremendous value without overburdening E-rate funding.

Internet access services for FY2008 and FY2009. Of that amount, Edline determined which providers offer web hosting services and calculated their total funding commitment requests and total FCC Form 471 requests for FY2008 and FY2009. Edline’s analysis indicates, for example, that web hosting providers with 20 or more customers received approximately \$29,408,485 in funding commitments for FY2009. This figure is conservative, because, under FCC rules, core Internet access services are also provided in the telecommunications category of service.

³⁶ This calculation is based upon USAC data of 10 leading web site solutions correlated with enrollment data from National Center of Education Statistics.

B. Imposing a Cap on Funding for Web-Based Communications Tools Would Be More Beneficial for Schools Than a Priority 2 Designation.

Protecting the Universal Service Fund and protecting essential E-rate services, are both important goals. Today, limited dollars are spent on valuable web hosting services. Nevertheless, if that should change, or if the Commission and other stakeholders are legitimately concerned about the level of E-rate funding that is devoted to web-based communications tools, then the Commission should limit the funding of such tools up to a cap rather than declaring the tools ineligible, relegating web hosting to a Priority 2 service, or inconsistently applying eligibility rules on a feature by feature basis that is not technology neutral in order to limit what is spent on web hosting. A decision to designate web hosting services as Priority 2 is particularly problematic, as it would result in only the neediest schools having access to web hosting, which would be an unfair result for all of the other schools, administrators, families and students that have come to rely upon it.³⁷

If it is necessary to control the costs associated with web-based communications tools, a cap could be an effective manner of addressing any concerns over eroding the E-rate fund while still allowing educators and parents access to web hosting tools that are viewed as vitally important to education. A cap also would afford schools the opportunity both to continue utilizing essential web hosting communications tools, and the flexibility to select the web-based tools and technologies that meet their educational needs and objectives consistent with the National Broadband Plan.

In the National Broadband Plan E-rate NPRM,³⁸ the Commission proposes to implement a per student cap per school district to fund valuable internal connections. The benefit of this

³⁷ Given the similarity of web hosting and e-mail, web hosting should have the same priority as e-mail service. If e-mail is considered a Priority 1 “information service,” web hosting should be a Priority 1 information service.

³⁸ *National Broadband Plan E-rate NPRM* at 6902, ¶ 69.

approach is that it ensures a “predictable amount of funding is available for internal connections.”³⁹ “[M]any stakeholders have expressed a desire for a more predictable funding mechanism whereby schools and libraries would know on a yearly basis how much funding they will receive for internal connections. This predictability is essential so that schools and libraries can better plan for their future technological needs.”⁴⁰ All of this same rationale can be applied to web-based communications tools. It should be clear to the Commission based upon the outcry from the educational community that schools would rather have web-based communications tools, and web hosting in particular, subject to an annual cap, rather than have the availability of these valuable and essential communications tools stripped from the E-rate program altogether. In order to cap the spending for web-based communications tools, the Commission could either set a per student cap, or a per school cap, or set a fixed discount percentage for web hosting services that would limit the dollars spent on web hosting packages, which would also eliminate the need for complex and time-consuming cost-allocations for ineligible features. All of these solutions are reasonable approaches to addressing any potential cost issues regarding web hosting that may arise in the future if spending on web hosting becomes material to the E-rate program.

VI. CONCLUSION.

The Commission’s intent in the National Broadband Plan E-rate NPRM is to “proceed thoughtfully in stages to allow E-rate participants – both recipients and service providers – time to adjust and give the Commission time to evaluate the impact of individual reforms before proceeding to the next step.”⁴¹ Edline and ePals agree that the Commission should thoughtfully consider improvements to the E-rate program, and the impact of any changes, and should refrain at this time

³⁹ *National Broadband Plan E-rate NPRM* at 6902, ¶ 69.

⁴⁰ *Id.* at ¶ 70.

⁴¹ *Id.* at 6874, ¶ 4.

from making piecemeal decisions, such as the tentative decision to eliminate eligibility for web hosting, that run counter to the Commission's goals in the National Broadband Plan for education.

Any decision by the Commission to eliminate or diminish E-rate eligibility for web hosting services is inconsistent with the Obama administration's technology goals, the Commission's own National Broadband Plan, decisions reached by the Commission in the Report and Order that accompanies the FNPRM, and core concepts of "competitive neutrality" and "technological neutrality" which have justifiably served as guideposts for the E-rate program. Edline and ePals, and the 430 commenters that already filed comments in the docket in support of web hosting, urge the Commission to preserve eligibility for web hosting as a Priority 1 service. Moving forward, the Commission should insist in its own decision-making regarding E-rate eligibility, and in USAC's E-rate program administration, that all eligibility decisions are made consistent with competitive neutrality and technology neutrality.

In keeping with the forward-looking direction of the Obama Administration and the National Broadband Plan, different ways that applicants choose to communicate over the Internet should not have different eligibilities that constrain schools from accessing the most modern, cost-effective and educationally useful electronic tools. Instead, the Commission and USAC must treat similarly situated services (email, text messaging, web hosting, chat, blogs, discussion boards, microblogs, etc.) in the same manner for E-rate funding purposes (competitive neutrality) and refrain from providing preferential treatment to one form of electronic communication (technological neutrality). By consistently applying the Commission's own principles, a simpler framework for E-rate eligibility will emerge that everyone can understand (e.g. communications tools over any kind of technology are eligible, while content is not). This will reduce costs and burdens for program administration for applicants, service providers and USAC. A simpler, technology neutral framework also will obviate the need for complex cost allocations, feature by feature, which

consumes significant time for service providers and USAC. A simpler framework that makes all similarly-situated communications tools, over any technology platform, eligible, also will future-proof the ESL and require fewer changes over time as the technology evolves.

Respectfully submitted,

Jonathan Abrams
Chairman
Steven Sidel
Chief Executive Officer
Edline
200 West Monroe
Suite 1250
Chicago, IL 60606
(312) 346-9900

Edmund Fish
President
ePals, Inc.
13625-A Dulles Technology Dr.
Herndon, VA 20171
(703) 885-3400

Dated: July 9, 2010

Jennifer L. Richter
Mark C. Ellison
Jennifer A. Cetta
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037
(202) 457-5666

Counsel to Edline and ePals, Inc.

EXHIBIT A

EXHIBIT A

- I. Total Number of Commenters in CC Docket No. 02-6 Who Support E-rate Eligibility of Web hosting Services: 430**
- II. Of 430 Commenters, 97 Schools and School Districts Support Web hosting Services, Oppose Web Hosting's Removal From ESL**
 1. Asotin-Anatone School District
 2. Bangs ISD
 3. Beechwood Independent Schools
 4. Benton Community Consolidated School District No. 47
 5. Bloomfield Schools
 6. Bluffs School
 7. Brunswick County Schools
 8. Bullock County Board of Education
 9. Butte Falls School District
 10. Calhoun County
 11. Cannon County School District, TN
 12. Carbondale Elementary School District No. 95
 13. Catahoula Parish School Board
 14. Central City School # 133
 15. Central Heights School District
 16. Chittenden East Supervisory Union
 17. Christopher Unit School Dist. # 99
 18. Clarksville ISD
 19. Clay County USD # 379
 20. Cleburne County Schools
 21. Cleveland School District
 22. Cushing ISD/Becky
 23. Daphne Middle School
 24. Delhi Charter School
 25. Effingham County Board of Education
 26. Esko Public School – ISD 99
 27. Ewing Public School
 28. Fairhope Elementary School
 29. Fort Stockton Independent School District
 30. Franklin County Alabama
 31. Franklin Jefferson Special Education District
 32. Frenchtown School District
 33. Granbury Independent School
 34. Great Valley School District
 35. Greenville R-2
 36. Grosse Pointe Public Schools
 37. Haakon 27
 38. Haileyville Public Schools Russ Moore, Foley HS
 39. Hamburg School District

40. Hempfield Area Schools
41. Holy Family Elementary School
42. Immaculate Conception School
43. Itasca Independent School District
44. Jones County Schools
45. Kershaw County School District
46. La Vernia ISD
47. Lake County ESD/Sara Sarensen
48. Lenoir City School District
49. Lompoc Unified School District
50. Madawaska School Department
51. Manalapan Englishtown Regional Schools
52. Marlboro County School District
53. Miami East Local School District
54. Mid Peninsula School
55. Mineral Wells ISD
56. Mitchell County
57. Mt. Olive School District
58. Nazareth Area School District
59. Neches ISD
60. Onteora Central School District
61. Oregon Trail School District
62. Our Lady of Grace School
63. Parker Public Library
64. Paw Paw Public Schools
65. Pendleton County Schools
66. Phillipsburg ISD # 325
67. Pierce County Middle School
68. Poplar School District
69. Quakertown Community School
70. Rabun County School System
71. Red Hook Central School District
72. Redding School District
73. Redwater ISD
74. Rialto Unified School District
75. Robertson County Schools
76. Saddle Mountain Unified School District
77. Saint Vincent Academy
78. San Lorenzo Unified School District
79. Sandra Braa-Merced Union High School District
80. Somers School District
81. South Beloit CUSD # 320
82. South Mississippi County School District
83. Southbridge Public Schools
84. Spanish Fort Middle School
85. St. John's Catholic School
86. St. Rita School
87. Strathmore Union Elementary

88. Tallmadge City Schools
89. Tazewell County Schools
90. Thurgood Marshall Academy
91. Triad Community Unit School District No. 2
92. Unified School District No. 273
93. United School District
94. Warrensburg R-VI School District
95. Willow River Schools
96. Wilson School District
97. Worcester Public Schools

III. Of 430 Commenters, 326 Individuals with Unknown Affiliations Support Web hosting Services, Oppose Web hosting's Removal From ESL

1. Alan Jamison
2. Albertnetta Hamilton
3. Alexis Jenkins
4. Allen D. Bordelon
5. Alvin Buerkle
6. Alyson Roberson
7. Amanda Layne
8. Amy
9. Amy Berry
10. Amy Nimmer
11. Amy Ripkowski
12. Andrew Cohn
13. Andy Arnold
14. Andy Fish
15. Andy Schwartz
16. Angela Burke
17. Angela Hallock
18. Angela Parham
19. Angelia Dee Treadwell
20. Angie Milton
21. Angie Newby
22. Angie Wagler
23. Anja Evors
24. Ann Hodges
25. April Knust
26. Ariel Owen
27. Arnie Unger
28. Arthur Garcia
29. Avis Harris
30. Barry Zakes (2)
31. Bbarnes
32. Benny E Hendrix
33. Beth Bausher (2)
34. Beth Kight

35. Beth Summers
36. Beth Verstraete
37. Beverly B. Thomas
38. Beverly Spondike
39. Bill Marshall
40. Bill Poole
41. Bradley Lindquist
42. Brandi Mets
43. Brinton Bailey
44. Brenda Luke
45. Brent Horne
46. Brian Beisigl
47. Brian Craig
48. Brian Hogan
49. Brian Patrick
50. Carol Broughton (2)
51. Carol Foster
52. Carrie Whalen
53. Catherine Hamilton
54. Catherine Hannigan
55. Cathi Eredia
56. Cathy Brogan
57. Cathy Finley
58. Cathy Morton
59. Charles
60. Charles H. Epps
61. Charles Naas
62. Charlotte Hoya
63. Chris Franzen
64. Chris Guest
65. Chris Hamilton
66. Chris Jarka
67. Chris Usrey
68. Christine Owen
69. Chuck King
70. Colleen Calvano
71. Colleen LaGrange
72. Connie Richardson
73. Constance Bryson
74. Constance Stavrou
75. Corey Cochran
76. Craig Smith
77. Dan Christ
78. Dan Klaber
79. Dan Ragen
80. Dan Weber
81. Dana Horst (2)
82. Dave Frick-Wright

83. David Calkins
84. David Conrad
85. David Freeman
86. David Palme
87. Debbie B Rice
88. Deborah B McManus
89. Dee Benson
90. Denise Brown
91. Denise Ollestad
92. Denita Hill
93. Dennis Myhand
94. Derek Roh (2)
95. Devlynne Barnes
96. Diane Case
97. Dianne Anderson
98. Don Blanchard (2)
99. Donna Murray
100. Dotty Gonsalves
101. Doug Evans
102. Dr. De Ann M. Ramey
103. Dr. Holliday
104. Dr. Linda Storar
105. Dr. Michael Owens
106. Edie Rudolf (2)
107. Edward
108. Elizabeth Oliver
109. Elliott Paul
110. Ericka McIntosh
111. Eugenia Normand
112. Evelyn N Baugh
113. Flozzy McNeal
114. Frank Hernandez
115. Gary Adams
116. Gary Massaglia
117. Glen Granberry
118. Glenn Stott
119. Golda Donaldson
120. Gregg Faith
121. Gregg Spivey
122. Harreld Kirkpatrick
123. Holly Thornton
124. Howard Taylor
125. Hugh Wilson
126. J Wulff
127. J. Palicki
128. Jaime
129. James Burns
130. James Conley

131. James H. Armand
132. James Mason
133. James Oliphant
134. Jamie R. Burkett
135. Jan Horning
136. Jane Callahan
137. Jane Hill (2)
138. Janis Winbigler
139. Jay Bosworth
140. Jay Parker
141. Jean McCutchen
142. Jeff Burbank
143. Jennifer Fogel
144. Jeremey Rhoades
145. Jerry Swadley
146. Jerry T. White
147. Jessica Donato
148. Jim Davis
149. Jim Galloway
150. Jim Ochs
151. Joe Leacu
152. Joe Steele
153. Joel Andrews
154. Joetta Browning
155. Jon Cardwell
156. Jonathan D. Ellis
157. Joseph Nuismer
158. Joseph Palicki
159. Joy Williams
160. Judy Fletcher
161. Julia Bryant
162. Julia Monteith
163. Julian Diaz
164. Julie Mansour
165. Julie Morris
166. Julie Pierce
167. Julie Wulff
168. Karen Braxton
169. Karen Zink
170. Katarin Jurich, Ph.D.
171. Kathi Morgenstern
172. Kathryn Tison
173. Kathy Easter
174. Kathy English
175. Kathy Fayram
176. Kathy Ridge
177. Kay Highbarger
178. Ken Briggs

179. Ken Westgate
180. Kent Dillingham
181. Keran DeCamp
182. Kim Goodrich
183. Kim Walter
184. Kimberley Spivey
185. Kimberly Couch
186. Kirsten McLendon
187. Kristi Rice
188. Kyle Berger
189. Lance Lennon
190. Landon Scism
191. Laraine Boatright
192. Larry Smith
193. Lee Ann Wentzel
194. Lee Mansell
195. LeVance Gay
196. Lightspeed
197. Linda Adams
198. Linda H. Kirkland
199. Linda Howard
200. Linda Patrick
201. Lisa Petzinger
202. Lori Paup
203. Lori Wells
204. Lylia King
205. Lynn Hopper
206. Lynnette H. Duhamell
207. Lynnette Sawyer
208. M.K. Beedle
209. Marcia Klasey
210. Mark Beck
211. Mark McMurray
212. Mark Miller
213. Mark Pumphrey
214. Marlene Ramirez
215. Martha Franklin
216. Martha McCarthy
217. Mary Jo Peters (2)
218. Matthew Shell
219. Melissa Jensen
220. Melissa Shields
221. Meritte Threadgill
222. Merri Larson
223. Michael Crewse
224. Michael D Williams
225. Michael Duffy
226. Michael Estrada

227. Michael Lampson
228. Michael Murray
229. Michael Nace
230. Michael Roberts
231. Michele Crowley (2)
232. Michele White
233. Mike Cale
234. Mike Ingram
235. Mike Parchman
236. Mike Reinders
237. Mitch Thompson
238. Mollie McLeod
239. Monica Brantley
240. Mr. Brian Craig
241. Nancy Whalley
242. Neile Bennett
243. Pam Moorner
244. Patricia
245. Patricia Rabalais
246. Paul Zeller
247. Paula Raulerson
248. Peg Fisher
249. Peggy Collum
250. Penny Chennell
251. Perry Tison
252. Phil Carolan
253. Phillip Fountain
254. Rachel Arriaga
255. Rachel Hathhorn
256. Rami Hamadeh
257. Rebecca Comer
258. Rebecca Phillips
259. Reggie Clinton
260. Renita Heideman
261. Rhonda Cooper
262. Rhonda Kribbs
263. Richard Harp
264. Richard Kojis
265. Richard Wilson
266. Rita Whitaker.
267. Rob McKinney
268. Robert Costley
269. Robert Hagler
270. Robert Lucas
271. Robert Normand
272. Roger Ray Schnitzler
273. Ron Swanberg
274. Ronnie Wicks

275. Ronny Murray
276. Rosemary Karcher
277. Roy Cockerham
278. Ruth Allen
279. Samuel Platt
280. Sandi Sport
281. Sandra Braa
282. Sandra Thorpe
283. Sarah L Fletcher
284. Scarlett Clark
285. Scott
286. Scott Hand
287. Scott Patrick
288. Shana Covell
289. Shannon Whitt
290. Sheila Brawner
291. Stacie Lowe
292. Stacy Fees
293. Stan Winborne
294. Stephanie D. King
295. Stephanie Dersch
296. Stephanie Snyder
297. Steve Woloszyn
298. Steven Howe
299. Stuart Stipe
300. Sue Tucker
301. Susan Altman
302. Susan Hargett
303. Susan Lynch (2)
304. Susan Taylor
305. Susan Walber
306. Suzanne Chachere
307. Suzanne Stockton
308. Tamar Sydney-Gens
309. Tammy Hereau
310. Tammy McLane
311. Tammy Merritt
312. Terri DeLoach
313. Terry Burns
314. Terry E. Beasley
315. Terry Sue Fanning
316. Theresa Jamison
317. Thomas P. Casey
318. Tim Southerland
319. Tom Steele
320. Tommy Doss
321. Twanda Banks
322. Victor Coleman

- 323. Wayne Williford
- 324. William Seus
- 325. Wilda Stanfield
- 326. William Mobley

**IV: Of 430 Commenters, 7 Vendors or Services Providers Support Web hosting Services,
Oppose Web hosting's Removal From ESL**

- 1. Technology in Education Partnership
- 2. Nancy von Langen-Scott
- 3. Smoky Hill Education Service Center
- 4. One Economy Corporation Foundation for Educational Services
- 6. Granite Education Foundation
- 7. Mary Mehsikomer

CERTIFICATE OF SERVICE

I, Jennifer Cetta, certify on this 9th day of July 2010, a copy of the foregoing Comments of Edline and ePals, Inc. to the E-rate Further Notice of Proposed Rulemaking and the National Broadband Plan E-rate Notice of Proposed Rulemaking have been served via electronic mail or first class mail, postage pre-paid, to the following:

Priya Aiyar
Legal Advisor to Chairman Julius Genachowski
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Priya.Aiyar@fcc.gov

Sharon Gillett
Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Sharon.Gillett@fcc.gov

Randy Clarke
Legal Advisor to the Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Randy.Clarke@fcc.gov

Jennifer McKee
Acting Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Jennifer.McKee@fcc.gov

Gina Spade
Assistant Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Gina.Spade@fcc.gov

Cara Voth
Telecommunications Access Policy
Division
Wireline Competition Bureau
Federal Communication Commission
445 12th Street, SW
Washington, D.C 20554
Cara.Voth@fcc.gov

Mel Blackwell
Vice President
Schools and Libraries Division
Universal Service Administrative Company
2000 L Street, N.W., Suite 200
Washington, D.C. 20036
MBlackwell@usac.org

_____/s/_____
Jennifer Cetta